

### **Remarks**

In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration of the pending claims. Claims 21 through 32, 34 through 39, and 44 through 49 are pending in this application, and are the subject of the present examination. Claims 33 and 50 through 58 have been cancelled.

In a telephone conversation on July 23, 2004, the Examiner noted the Office's preference for phrases such as "activates" or "induces" rather than 'is active in.' The claims have been amended to reflect this phraseology; support for the amendment is found in Examples III and V, on pages 40 through 42.

Amendment D incorporates the amendments and arguments made in Amendment C, which was not entered as allegedly introducing subject matter that would require further search. Applicants respectfully disagree, and note that claims 59 through 62 were dependant claims and thus would require no further search. Nonetheless, in an effort to be cooperative and speed allowance of the remaining claims, Applicants have not introduced these dependant claims in the present Amendment. Applicants reserve the right to pursue the subject matter of these claims, as in a separate continuing application.

### **Objections to the Claims**

In the Final Office Action, claim 49 was objected to because, while specific amino and carboxy termini are set forth, there was no reference to a particular SEQ ID NO. Claim 49 has been amended to refer to specific SEQ ID NOs. This amendment is believed to address the objection; accordingly applicants request that the objection be withdrawn and the claim allowed.

### **Rejections under 35 U.S.C. § 112**

In the Final Office Action, claims 21 through 23, 26, 29, 32, 36, 37, and 38 stood rejected, and claims 45 through 48 and 50 through 58 were rejected, under 35 USC § 112, first paragraph, for lack of written description for the fragment recited in claims 21 through 23, 36, 37, 45 and 50, as previously set forth; claims 50, 54 and 58 were rejected for recitation of polypeptides that are at least 80% identical to SEQ ID NO:8. While disagreeing with the apparent basis of the first aspect of the rejection (the fragment language), applicants have amended claims 21 through 23, 36, 37, and 45 to recite fragments having specific amino and carboxy termini. Applicants submit that this amendment addresses the concern raised by the Examiner with respect to the fragment language, and respectfully request that these claims be allowed. Moreover, applicants specifically reserve the right to pursue claims to additional fragments, as in a continuing application.

Claims 50 through 58 have been cancelled, and the rejection thereof with respect to the "80%" identity is thus moot. However, applicants respectfully disagree with the basis of the

rejection, and submit that the claims do not define a genus of nucleic acids “only by their functional activity” but also include structural language. Such claims, applicants submit, clearly define what applicants were in possession of to one of ordinary skill in the art. Nonetheless, in the interest of speedy issuance of the claims that have been deemed allowable, applicants have cancelled these claims. Applicants specifically do not abandon the subject matter of these claims, and reserve the right to pursue them, as in a continuing application.

In the Final Office Action, claim 33 stood rejected under 35 USC § 112, first paragraph, for lack of enablement for an isolated polypeptide comprising the amino acid sequence set forth in SEQ ID NO:6. According to the Examiner, one of ordinary skill in the art would not know how to use the polypeptide of SEQ ID NO:6 because Applicants do not disclose any activities for it. The Examiner further asserted that to use the polypeptide of SEQ ID NO:6 as a research tool or to raise antibodies did not appear to be a specific, substantial and credible utility. While disagreeing with the apparent basis of the rejection (the asserted lack of utility), applicants have cancelled claim 33. Applicants respectfully assert that one of ordinary skill in the art could use the polypeptide of SEQ ID NO:6 in an assay or to prepare antibodies. Such uses do not constitute research to establish the function of the polypeptide; rather use as an immunogen or in an assay would be recognized by the skilled artisan as flowing naturally from the relationship of the polypeptide of SEQ ID NO:6 with the other relevant polypeptides in this case (i.e., those of SEQ ID NOs:8 and 13). Nonetheless, Applicants have cancelled claim 33, in an effort to be cooperative and speed issuance of the remaining claims. Applicants specifically reserve the right to pursue claims to this subject matter, as in a continuing application.

**CONCLUSIONS**

Claims 21 through 32, 34 through 39, and 44 through 49 are now pending in the application and are believed to be in condition for allowance. If the Examiner has any questions or concerns about the present claims, she is asked to contact the undersigned at the direct dial number given below, to facilitate prosecution and speed allowance of the claims.

Respectfully submitted,



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Date: July 26, 2004

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